

CHAPTER 7
EQUAL EMPLOYMENT OPPORTUNITY, AFFIRMATIVE ACTION, AND
TARGETED SMALL BUSINESS

[Prior to 4/20/88, Regents, Board of (720)]

681—7.1(262) Equal opportunity policy. It is the policy of the board of regents, hereinafter board, to provide equal opportunity in all aspects of regent operations to all persons without regard to race, creed, color, religion, sex, national origin, age, or status as a veteran of the Vietnam era, or physical or mental disability except where it relates to a bona fide occupational qualification. The board of regents and all officials who are responsible to the board of regents shall take affirmative action in personnel administration to overcome the effects of past or present practices, policies, or other factors which serve as barriers to equal employment opportunity. Contractors doing business with the board of regents shall take affirmative action to ensure that all persons without regard to race, creed, color, religion, sex, national origin, age, or status as a veteran of the Vietnam era, or physical or mental disability except where it relates to a bona fide occupational qualification above are effectively afforded equal employment opportunities. Institutions under the governance of the board of regents shall provide opportunities for minority and women businesses in the awarding of contracts through a procurement set-aside program as authorized by statute.

7.1(1) Definitions.

“*Actively managed*” in the above context means exercising the power to make policy decisions affecting the business.

“*Affirmative action*” means action appropriate to overcome the effects of past or present practices, policies, or other barriers to equal employment opportunity.

“*Bona fide occupational qualification*” means a qualification reasonably necessary to the normal function of a position in the operation of a particular business. The concept of the bona fide occupational qualification is narrow in scope and will not be applied to include the mere preference or convenience of the employer.

“*Minority person*” means an individual who is a Black, Hispanic, Asian or Pacific Islander, American Indian or Alaskan native.

“*Operated*” in the above context means being actively involved in the day-to-day management of the business.

“*Protected classes*” shall mean racial or ethnic minorities, and groups who are protected under federal and state laws because of their creed, color, religion, sex, national origin, age, or status as a veteran of the Vietnam era, or physical or mental disability.

“*Small business*” means any enterprise which is located in this state, which is operated for profit under a single management, and which has either fewer than 20 employees or an annual gross income of less than \$3,000,000 computed as the average of the three preceding fiscal years. This definition does not apply to any program or activity for which a definition for small business is provided for the program or activity by federal law or regulation or other state law.

“*Targeted small business*” means a small business which is 51 percent or more owned, operated, and actively managed by one or more women or minority persons.

7.1(2) Equal employment opportunity—administration.

a. In order to carry out the purposes of the policy, the regent equal employment opportunity compliance office has been established at the Old Historical Building, Des Moines, Iowa. The coordination of the policy shall be the primary responsibility of the equal opportunity compliance officer, who in consultation with regent institutions will act under the general supervision of the executive director of the board.

b. The emphasis in the administration of the policy shall be to coordinate equal opportunity and affirmative action in employment at regent institutions and the board office and to require equal opportunity and affirmative action in employment by contractors who do business with the board of regents and its institutions. In administering the policy the equal opportunity compliance officer shall monitor utilization of minority and women business enterprises as sources of supplies, equipment, construction, and services.

681—7.2(262) Equal employment opportunity.

7.2(1) Affirmative action. The board of regents and all officials who are responsible to the board of regents shall appoint, assign, and advance employees on the basis of merit and fitness. Each institution under the board of regents shall promulgate a clear and unambiguous written policy of nondiscrimination in employment and shall adopt an affirmative action program containing goals and time specifications in personnel administration. Each institution shall submit its annual affirmative action report to the board between December 15 and December 31 each year. The board shall submit its affirmative action report to the department of management by January 31 of each year.

7.2(2) Personnel administration.

a. Each institution and the board office shall regularly review its personnel practices and procedures with a view to correcting personnel practices and procedures which may contribute to discrimination in appointment, assignment, or advancement. Each institution shall conduct programs of job orientation and provide training and organizational structure for upward mobility and shall place emphasis upon fair practices in employment. Each institution shall also bar from all employment application forms any inquiry as to race, creed, color, religion, sex, national origin, age, or status as a veteran of the Vietnam era, or physical or mental disability, except for statistical purposes, unless it relates to a bona fide occupational qualification. The employment practices of the board of regents shall be in strict conformity to the provisions of all federal and state laws, executive orders, and rules and regulations of the board of regents and of its institutions which pertain to equal employment opportunity and affirmative action.

b. The board of regents shall develop a procedure to permit appointment of appropriately certified disabled applicants pursuant to Iowa Code section 19B.2.

681—7.3(262) Employment services. All officials responsible to the board of regents, who provide placement or referral services for public or private employers, shall refuse to fill any job order which violates federal and state laws, executive orders and rules and regulations of the board of regents and of its institutions which pertain to equal employment opportunity and affirmative action.

This rule is intended to implement Executive Order number 15 of 1973.

681—7.4(262) State educational, counseling, and training programs. All educational and vocational guidance programs and their essential components, counseling and testing and all on-the-job training programs for the employees of regent institutions and the board office shall be administered in accordance with the provisions of all federal and state laws, executive orders, and rules and regulations of the board of regents and of its institutions which pertain to equal employment opportunity and affirmative action. Every official responsible for the implementation of such programs shall be charged with the duty of seeking to provide equal opportunity for all, regardless of race, creed, color, religion, sex, national origin, age, or status as a veteran of the Vietnam era, or physical or mental disability except where it relates to a bona fide occupational qualification.

This rule is intended to implement Executive Order number 15 of 1973.

681—7.5(262) State services and facilities. Equal treatment shall be guaranteed by all institutions of the board of regents in providing their services to the public, and equal treatment shall be guaranteed in the use of their facilities. Those in charge of the various institutions shall take especial care that no institutional facility is used in the furtherance of any discriminatory practices.

681—7.6(262) Contract compliance.

7.6(1) *Equal employment opportunity.* The state board of regents and the institutions under its jurisdiction are responsible for the administration and promotion of equal opportunity in contracts and services and the prohibition of discriminatory and unfair practices within any program administered by institutions under the board of regents receiving or benefiting from state financial assistance in whole or in part. Every official responsible to the board of regents who is authorized to make contracts or subcontracts for public works or for goods or services shall cause to be inserted into every such contract or subcontract a clause in which the contractor or subcontractor is prohibited from engaging in discriminatory employment practices forbidden by federal and state laws, executive orders, and rules and regulations of the board of regents and of its institutions which pertain to equal employment opportunity and affirmative action. Contractors, vendors, and suppliers shall further be required to submit or have on file with the board of regents' equal employment opportunity compliance office a copy of their affirmative action program containing goals and time specifications. These contractual provisions shall be fully monitored and enforced. Any breach of them shall be regarded as a material breach of contract.

a. Compliance shall be determined by a comprehensive review and evaluation of a contractor's employment policies and practices and shall depend on an analysis of all relevant factors, including the following:

- (1) The contractor's publicly stated and posted policy regarding equal opportunity employment.
- (2) The contractor's external dealings with unions, employment agencies, newspapers, and other sources of employees.
- (3) The methods by which and places where the contractor seeks to recruit employees.
- (4) The contractor's use of tests and qualifications for positions which are job related and not culturally biased.
- (5) Classification and compensation plans which apply equally to all employees.
- (6) Training programs which provide all persons including those in the protected classes with an equal opportunity to qualify for employment and advancement.
- (7) The contractor's active support of local and national community action programs.
- (8) The effectiveness of the contractor's affirmative action program as evidenced, in part, by the number or percentage of persons of the protected classes employed at all levels, taking into account the geographical locations of the contractor's work force.

b. The judgment regarding compliance shall be favorable if it is determined that the contractor is working affirmatively toward extending opportunities for members of the protected classes and is not discriminating against these persons. Contractors must be able to demonstrate to the satisfaction of the compliance officer that their affirmative action program is productive.

7.6(2) *Procedures.*

a. Contractors will be sent periodically an informative statement explaining the regents' equal employment opportunity policy. In the case of construction contracts, the statement constitutes part of the general conditions and bid specifications, and compliance with these is a condition of doing business with regent institutions. It is the intention of the regents to be fair and to avoid harassment and unnecessary reporting requirements and to be clear and firm about policy and expectations.

b. Contractors are to submit periodic reports as requested by the compliance office. The report forms shall be as brief as possible and designed to elicit relevant information about employment practices. The compliance office may request other relevant information from a contractor at any time.

c. The compliance office will solicit and compile additional information about present and prospective contractors from any reliable source including regent institutions, the Iowa civil rights commission, department of economic development, and other state and federal agencies.

d. The compliance office shall systematically review the reports and all other available information concerning the employment practices of present and prospective contractors. Whenever there is reasonable doubt, based on such reports and information, as to whether or not a contractor is discriminating or is failing to take affirmative action in compliance with the regents' policy, the compliance office shall undertake a compliance review of the contractor. Every reasonable effort shall be made to secure compliance through conciliation and persuasion. The burden shall be on the contractor to demonstrate compliance and eligibility to do business with the regents.

e. The compliance office will receive written and signed complaints against a contractor from any person aggrieved by the contractor's alleged discrimination. The compliance office shall promptly notify the institution involved of a complaint. The burden shall be on the complainant to prove the truth of the allegations. Cognizance will also be taken of verbal complaints, newspaper reports, and any other legitimate source, and these will be followed up if investigation appears to be justified. Award of contracts may be deferred while an investigation is pending, but executed contracts will not be suspended except in compelling situations.

f. If an investigation or compliance evaluation discloses that a contractor has discriminated or has failed to take affirmative action, the executive director in consultation with regent institutions may declare the contractor ineligible unless it can otherwise be affirmatively determined that the contractor is able to comply. The executive director shall issue a written notice of ineligibility to the contractor, and give the contractor 30 days to show cause why enforcement proceedings should not be instituted. During the 30-day show cause period, every effort shall be made to effect compliance through the processes of conciliation, mediation, and persuasion.

g. If the contractor fails to show good cause for failure to comply or fails to remedy that failure, the executive director in consultation with regent institutions may issue a written notice of proposed cancellation or termination of the existing contract or subcontract and debarment from future contracts and subcontracts, giving the contractor ten days to request a hearing. If a request for hearing has not been received within ten days from the notice, the contractor may be declared ineligible for future contracts and current contracts may be terminated for default following the approval of the state board of regents.

h. Hearings shall be conducted by a hearing examiner appointed by the executive director of the board from a panel for hearing examiners selected and approved by the board. The hearing examiner shall submit findings of fact and conclusions to the executive director who shall make final recommendations for final action to the board of regents.

i. The equal opportunity compliance officer shall promptly notify the board of regents and regent institutions when such action is pending regarding the suspension, cancellation, or termination of existing contracts or subcontracts and debarment from future contracts and subcontracts.

7.6(3) Bidding requirement. All construction specifications shall include, in the "instruction to bidders," the following paragraph: "Bidders shall file with each bid a completed board of regents equal employment opportunity data reporting form as included in the specifications or certify on the certificate of reporting that they have filed their annual equal employment opportunity data reporting form with the board of regents equal opportunity compliance office."

681—7.7(73GA,ch315) Targeted small business.

7.7(1) Procurement goal program. It is the policy of the board of regents to provide contract opportunities to targeted small businesses (TSBs). Institutions governed by the board of regents shall seek, pursuant to the Iowa targeted small business procurement Act, 1989 Iowa Acts, chapter 315, section 20, and board policy, to contract with "targeted small businesses" as sources of supplies, equipment, construction, and services. All laws and rules pertaining to solicitations, bid evaluations, and contract awards apply to targeted small businesses.

7.7(2) *Program to award contracts.* Regent institutions in consultation with the board office shall develop a program for awarding contracts to targeted small businesses. Regent institutions may divide total purchases, for services or goods, into tasks or quantities when it is economically feasible and allows maximum targeted small business participation.

7.7(3) *Construction contracts.*

a. Regent institutions are authorized to negotiate or obtain competitive bids from targeted small businesses on construction contracts under conditions specified. Regent institutions may request the assistance of the department of economic development or the department of management in the negotiation of a contract price.

(1) Regent institutions are authorized to obtain competitive bids from targeted small businesses on construction contracts.

(2) Regent institutions shall encourage targeted small business contractors to submit bids as prime contractors on capital projects.

b. Regent institutions are authorized to establish targeted small business participation goals for construction contracts that are publicly bid on a competitive basis. On contracts for which targeted small business participation goals are encouraged, the targeted small business participation goal shall be clearly identified in the special conditions of the contract documents. Satisfaction of the participation goal may be achieved through targeted small business participation in a contract as a prime contractor or subcontractor, provided that only that portion of the contract price accruing to the targeted small business for work performed shall be used to determine whether the participation goal has been met.

c. On construction contracts competitively bid for which a participation goal is indicated, each bidder who is not a targeted small business shall submit with the bid the name(s) of targeted small business(es) to whom a subcontract will be awarded, a description of the work to be performed, and the dollar amount assigned to the work to be performed. The prime contractor shall sign a statement attesting to this provision.

d. Regent institutions shall require the prime contractor to make a good faith effort to utilize targeted small businesses. The prime contractor shall maintain, and provide upon request, documentation as to what good faith efforts were undertaken to utilize targeted small businesses. Good faith effort may include, but is not limited to:

(1) Prime contractor's efforts to locate minority- and women-owned businesses.

(2) Prime contractor's efforts to make minority- and women-owned businesses aware of contracting opportunities.

(3) The prime contractor's initiatives to encourage and develop TSBs, taking into account the availability of TSBs to work on state-assisted contracts.

(4) Prime contractor's efforts to increase the participation of minority- and women-owned businesses in the contractor's state-assisted contract.

7.7(4) *Supply, service, and equipment contracts.*

a. Regent institutions are authorized to negotiate or obtain competitive bids from targeted small businesses on supply, service, and equipment purchase orders or contracts under conditions specified. Regent institutions may use any or all of the following procedures to encourage targeted small business participation to the maximum extent possible.

(1) Identify purchases that offer potential targeted small business participation.

(2) Identify targeted small businesses who can participate in the purchasing contract.

(3) Send proposals and invitations to bid to targeted small businesses who can participate in the purchasing contract.

b. Regent institutions shall encourage targeted small business(es) to submit bids or quotations on supply, service, and equipment solicitations.

c. Regent institutions may:

(1) Identify significant state purchasing commodities that are void of targeted small business participation.

- (2) Identify targeted small businesses that have the potential to develop in these areas.
- (3) Refer targeted small businesses who have potential or have expressed interest in these purchasing areas to the Iowa department of economic development.

d. Reserved.

7.7(5) *Certified targeted small businesses.* Only those targeted small businesses that have been certified by the department of economic development shall be eligible as part of the targeted small business program to participate in the regents' program. Application to participate in the regents' program may be made by completing a vendor/contractor application form available from the Iowa Department of Economic Development, Small Business Section, 200 East Grand Avenue, Des Moines, Iowa 50309, or from regent institutions.

7.7(6) *Assistance to targeted small business.* Regent institutions shall cooperate with the director of the department of economic development in the director's efforts to carry out the responsibility to develop and make available, in all areas of the state, programs to offer and deliver concentrated, in-depth advice and services to assist targeted small businesses, as set forth in 1989 Iowa Acts, chapter 315. The advice and services shall extend to all areas of business management in its practical application including, but not limited to, accounting, engineering, drafting, grant writing, obtaining financing, locating bond markets, market analysis, and projections of profit and loss.

7.7(7) *Performance standards.* Targeted small businesses shall meet the required performance standards, procurement specifications, and the purchasing procedures of regent institutions.

a. Determination of performance capability may include consideration of some or all of the following: production capacity, financial capacity, technical competence, timely delivery and service capabilities.

b. Reserved.

7.7(8) *Inability to perform.*

a. When the institution determines that a targeted small business is unable to perform under a contract, the executive director of the board of regents, the regent equal opportunity compliance officer, and the director of the department of economic development shall be informed.

b. Nothing in this rule shall prohibit the institution from pursuing remedies set forth in contractual agreements entered into between the institution and the targeted small business where the institution reasonably determines that the targeted small business is unable to perform.

7.7(9) *Reporting.* The institutions shall notify the executive director of anticipated purchasing requirements and shall provide additional information as required by statute no later than August 10 and quarterly thereafter. The board shall receive and review anticipated purchasing requirements by the institutions on a quarterly basis. The executive director shall notify the department of economic development and the department of management of anticipated purchases and recommended goals no later than August 15 of each fiscal year and quarterly thereafter.

This rule is intended to implement 1989 Iowa Acts, chapter 315, section 20, and Executive Order number 15 of 1973.

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